

Jill T. O'Shea (0034692)
Attorney for Defendant,
Cinergy Corp.

IN THE UNITED STATES DISTRICT COURT
SOUTHWESTERN DISTRICT OF OHIO
WESTERN DIVISION

BILLY BRANTLEY, et al.

Plaintiffs,

vs.

CINERGY CORP.

Defendant

CASE NO. C-1-01-378

Judge Susan J. Dlott

AFFIDAVIT OF
SCOTT MURRISON

STATE OF OHIO)
)ss.
COUNTY OF HAMILTON)

Comes now affiant, Scott Murrison, after being duly cautioned and sworn,
deposes and states as follows:

1. That I am presently employed as Field Supervisor, Electric T&D C&M with The Cincinnati Gas & Electric Company ("CG&E").
2. That I have been Todd Tolbert's supervisor most recently from April 2003 to the present.
3. That the Zero Tolerance Rules were originally implemented on or about November of 2000 as a result of several serious safety violations including two electric contact incidents in Indiana, one involving a fatality and the other the loss of both hands, and an Ohio incident which occurred in the year 2000.
4. That Exhibit "A" is a true and accurate copy of the original zero tolerance rules.

5. That Exhibit "B" is a true and accurate copy of internal correspondence from John Procario to all RBU employees subject: Zero Tolerance dated February 19, 2002.

6. That the policy provides that "safety infractions associated with the use of PPE, when in life sustaining situations, will result in a mandatory five (5) day suspension for the first offense . . . Examples of life sustaining PPE include:

❖ Gloves and sleeves while in the primary area

7. That on or about June 27, 2003 at 11:00 a.m. I went out to a job site at 3887 Washington Way for a crew check on Kenny Beckett, Brian Cox and truck 5482.

8. That the crew was assigned to change out a 50 kva 19.9/34.5 overhead transformer.

9. That as I was coming down the street, I observed truck 5482 boom in the air and truck 5566 bucket in the air.

10. That I observed Brian Cox working on the transformer with no cover up protection on the two electric phases above him.

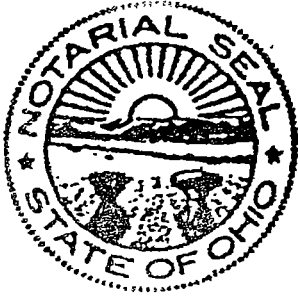
11. That I also observed Brian Cox not wearing the personal protective equipment of rubber gloves or sleeves.

12. That Todd Tolbert was standing behind truck 5482 watching Brian Cox working.

13. That Brian Cox, Lineperson "A" and Todd Tolbert, Senior Lineperson "A", were suspended for five (5) days 40 hours no pay consistent with the zero tolerance policy.

14. That I have first hand knowledge of the above.

FURTHER AFFIANT SAITH NAUGHT



JILL T. O'SHEA, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION
DATE, SECTION 147.03 O.R.C.

Scott Murrison
Scott Murrison

NOTARY OF PUBLIC

Sworn to and subscribed in my presence this 30th day of July, 2003.

Jill T. O'Shea
Notary Public

Respectfully submitted,

Jill T. O'Shea
Jill O'Shea (0034692)
CINERGY SERVICES, INC.
139 East Fourth St., Room 25 AT II
Cincinnati, Ohio 45201-0960
Telephone: (513) 287-2062
Facsimile: (513) 287-3810

*Attorney for Defendant
Cinergy Corp.*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served via hand delivery this
1st day of August, 2003 to:

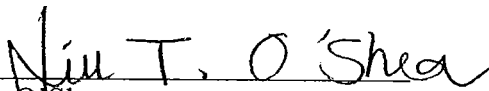
Paul H. Tobias
David D. Kammer
TOBIAS, KRAUS & TORCHIA, LLP
414 Walnut Street
Suite 911
Cincinnati, OH 45202

I certify that a copy of the foregoing pleading was served via overnight mail this
1st day of August, 2003 to:

David W. Sanford
Eric Bachman
Charles Dixon
GORDON, SILBERMAN, WIGGINS & CHILDS, P.C.
7 DuPont Circle
Suite 200
Washington, D.C. 20036

I certify that a copy of the foregoing pleading was served via regular mail this 1st
day of August, 2003 to:

Grant E. Morris
LAW OFFICES OF GRANT E. MORRIS
7 DuPont Circle
Suite 250
Washington, D.C. 20036



Jill T. O'Shea

*revised
11/2/00*

ZERO TOLERANCE RULES

Zero tolerance shall be enforced for the following safety violations:

- ❖ Failure to follow section 7.3.1.1 and use all other appropriate personal protective equipment, including hard hat, fire retardant shirt, eye and face protection, and foot protection as required.
 - 5 day suspension – subject to discharge
- ❖ Failure to apply appropriate fall protection when working.
 - 5 day suspension – subject to discharge
- ❖ Failure to properly wear seatbelts when operating or riding in a vehicle.
 - 3 day suspension – subject to discharge

INTERNAL CORRESPONDENCE



To: All RBU Employees
From: John Procario
Subject: Zero Tolerance
Date: February 19, 2002

In 2001, the Regulated Business Unit adopted a Zero Tolerance Safety Program. The purpose of this program is to increase the focus on safety in order to both prevent accidents and minimize the severity of any accidents that do occur.

I am pleased to report that this program had the intended effect. Work accident statistics have shown an improvement in both frequency and severity last year. We appreciate the diligence you have shown in your efforts to create a safe work environment and your recognition and understanding that unsafe behavior cannot be tolerated. The safety of our employees is too important to have any other philosophy.

Although we are pleased with the improved safety performance last year, we also recognize that zero tolerance can create morale issues among employees. To help us better understand how to maintain a strong safety program while meeting the needs of employees, we hosted four employee focus group meetings late last year. We understand that you do not want to feel that any one mistake might end or permanently damage your career. We also recognize that although any infraction of a safety rule is wrong, some carry a higher level of risk than others.

As a result of these meetings, we have decided the following:

- The Zero Tolerance Program will continue with modifications. We intend to send a clear message that accidents **can** be prevented and injuries minimized when proper work methods and equipment are utilized, including personal protective equipment (PPE).
- Safety infractions associated with the use of PPE, when in life sustaining situations, will result in a mandatory five-day suspension for the first offense. A second offense will result in additional discipline. Examples of life sustaining PPE include:
 - Gloves and sleeves while in the primary area
 - The proper utilization of a body harness
 - The use of proper trenching and shoring work methods

- Safety infractions of a less critical nature will result in a more traditional progressive disciplinary approach, i.e. letter of reprimand, days off, etc. Infractions that fall into this category include:
 - The use of leather gloves
 - Proper shoes
 - Fire retardant shirts, etc.
- The use of seat belts is mandatory when a vehicle is moving. An infraction of this rule, while a vehicle is on company property, will in most cases result in the use of progressive discipline beginning with a letter of reprimand. Violations that occur off of company property will automatically result in a mandatory three-day suspension, followed by additional steps consistent with progressive discipline.

Not every situation can be addressed in a memo or policy statement. For that reason, every infraction will require fact-finding followed by the appropriate management review before any action is taken. This will allow us to better determine the severity of the infraction and react in an appropriate way.

I have asked our Safety and Technical Training personnel to work through our operating groups to coordinate a review of our safety manual and appropriate work practices. This effort will begin on an immediate basis and will be ongoing. They have been asked to report their progress to me on a quarterly basis.

Again our goal is to prevent accidents and minimize injuries. We have a responsibility to implement policies which help achieve this goal.

We appreciate your commitment and the contributions you make to Cinergy's overall success. Your focus on safety is also greatly appreciated. With your help, we can make 2002 the most productive and safe year ever.